

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

C L O S E D

JOHN TYRONE GREEN,

Petitioner,

v.

Case No. 07-14153
Honorable Anna Diggs Taylor

STATE OF MICHIGAN,

Respondent.

**ORDER TRANSFERRING CASE TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT PURSUANT TO 28 U.S.C. § 2244(b)(3)(A)**

Petitioner, John Tyrone Green, has filed a *pro se* petition for a writ of habeas corpus challenging two first-degree murder convictions, which were imposed following a bench trial in the Wayne County Circuit Court. In 1993, he was sentenced by Judge Edward Thomas to life imprisonment, without the possibility of parole on those convictions. Previously, Petitioner filed two habeas petitions in federal court, challenging the same convictions and sentence. For the following reasons, the Court concludes that it must transfer this case to the United States Court of Appeals for the Sixth Circuit.

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), codified at 28 U.S.C. § 2241 *et. seq.*, amended 28 U.S.C. §§ 2244, 2253, and 2254, govern habeas corpus proceedings in federal courts. Pursuant to those amendments, an individual seeking to file a “second or successive” habeas petition must ask the appropriate court of appeals for an order directing the district court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998); *In re Wilson*, 142 F.3d 939, 940 (6th Cir. 1998).

This requirement transfers to the court of appeals a screening function which the district court

previously performed. *Felker v. Turpin*, 518 U.S. 651, 664 (1996).

Petitioner filed a prior habeas corpus petition challenging the same convictions at issue in this case, which was denied on statute of limitations grounds. *See Green v. Smith*, No. 99-CV-76269 (E.D.Mich. Aug. 15, 2000) (Friedman, J.). Petitioner then filed a second petition on May 21, 2007, with this Court, which was transferred to the Sixth Circuit Court of Appeals. *Green v. Romanowski*, No. 07-12194 (E.D.Mich. June 6, 2007) (Zatkoff, J.). That petition is still pending before the Sixth Circuit Court of Appeals. This is Petitioner's third petition. Petitioner has not obtained appellate authorization to file this subsequent petition as required by 28 U.S.C. § 2244(b)(3)(A).

ACCORDINGLY, the Court **ORDERS** the Clerk of the Court to transfer this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631¹ and *Sims v. Terbush*, 111 F.3d 45, 47 (6th Cir. 1997) ("when a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or successive petition for habeas corpus relief . . . is

filed in the district court without § 2244(b)(3) authorization from this court, the district court

¹28 U.S.C. § 1631 provides in pertinent part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed . . . , and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it was transferred.

shall transfer the document to this court pursuant to 28 U.S.C. § 1631”).

DATED: October 17, 2007

s/Anna Diggs Taylor
ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail disclosed on the Notice of Electronic Filing on October 17, 2007.

John Green, #196584
Gus Harrison Correctional Facility
2727 E. Beecher Street
Adrian, MI 49221

s/Johnetta M. Curry-Williams
Case Manager